

Frequently Asked Questions About Powers of Attorney

1. Q. What is a Power of Attorney (POA)?

A. A POA is a document that authorizes someone else to act as your agent. For example, you might grant or give a POA to a friend, authorizing your friend to act as your agent to sell your car, ship your household goods, or obtain medical care for your child. The “grantor” of a POA is the person who makes the POA. The “agent” is the person authorized under the POA to act for the grantor.

2. Q. Are there different kinds of POAs?

A. Yes. The two main types are general and special POAs. A general POA allows your agent to do any and all things that you could legally do yourself. A general POA is essentially unlimited. A special (or limited) POA lists the particular act or acts that the agent is authorized to do and limits the agent’s authority to only those acts.

3. Q. When does a POA expire?

A. Theoretically, a POA can be made out for as long as the grantor wants. As a practical matter, however, a POA, especially a general POA, should almost never be made for an indefinite time period. Legal Assistance Offices usually make general POAs valid for no longer than two years. After that, the POA has to be renewed by the grantor.

4. Q. What are some of the things a special POA can do?

A. You can use a special POA to authorize your agent to do almost any legal action that you could do yourself. The following list is just a sample of the actions that could be included in a special POA.

- a. Buy or sell real estate.
- b. Purchase, register, or sell a car.
- c. Cash your paycheck or other checks or withdraw money from your bank account.
- d. Admit a child to the hospital for medical care.
- e. Ship or store furniture and household goods.
- f. Sign rental and utilities contracts.
- g. Sign an income tax return.
- h. Clear or accept quarters during a PCS move.
- i. Sign a lease.

These are just a few of the many things that can be done with a special POA. All you have to do is describe the particular actions that your agent is authorized to take on your behalf.

5. Q. Are there any things a POA cannot do?

A. Although a POA is valid for most purposes, in many states there are some items that cannot be accomplished with a POA, because these actions are so important and personal that they cannot be delegated to another. For example, a marriage ceremony or will execution cannot be done by a POA. There are also cases when a particular form of POA is required and no other form will be accepted. Banks, financial organizations and the Internal Revenue Service, for example, usually require their own forms to be used. This particular requirement is more in the nature of a business practice; in reality, the particular form used has no legal significance whatsoever.

6. Q. All this sounds like a good deal – why doesn't everyone have a POA?

A. A POA can be very useful if you have one in effect when you need it, but a POA can also be abused, so there are potential disadvantages to having a POA. You have to evaluate your own particular situation. A recently separated spouse, for example, might use a POA from the other spouse to clean out the grantor's bank account, go on a shopping spree, or sign up for a bunch of new credit cards. As you can see, a POA can be both very helpful and very dangerous. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.

7. Q. What steps can I take to prevent improper use of my POA?

A. There is no way to guarantee that your POA will not be misused, but here are some tips to help prevent abuse:

- a. Never have a POA unless you need one.
- b. If you feel you might need a POA, have one prepared, but don't sign it or give it to your agent until you need it.
- c. Always put an expiration date on your POA; never make a POA that lasts indefinitely.
- d. Make sure your expiration date is long enough for your agent to accomplish the job, but not longer than is needed. The duration will depend on the type of job to be accomplished and the risk of abuse. A medical care POA for a child, for example, poses almost no risk of abuse, so a very long duration would probably not be much of a problem. A general POA, however, poses a very significant risk, so a much shorter duration is usually more appropriate.

8. Q. Are there any special requirements for POAs?

A. A POA must be signed in front of a notary public. If you wish, it can be recorded at the county Registrar's Office in the location where the POA will be used. As a general rule, however, a POA is fully effective even without being recorded.

9. Q. Does every business or bank have to accept my POA?

A. No. Everyone is free to accept or reject a POA. Some businesses or banks require that the POA be recorded, while others do not. Some banks will accept only a special POA. The bottom line is that if you are relying on a POA to accomplish an important task, you should check with the business or bank beforehand to be sure that it will actually be accepted.

10. Q. Does a POA expire upon my death or mental incapacity?

A. A POA always expires on the death of the grantor (the person signing it) or on the death of the agent named in it. A POA also usually expires upon the grantor's becoming incompetent. However, a mentally competent grantor may include a clause in a POA that makes the POA effective even during the grantor's subsequent mental or physical incapacity. This type of POA is called a "durable" POA. In many states, durable POAs must be recorded if the grantor does become mentally incapacitated.

11. Q. How does my agent actually sign for me?

A. The agent should sign the grantor's name, then sign the agent's name, and then indicate the agent's authority to sign. For example, "John Grantor, by Mary Agent, with Power of Attorney."

12. Q. What if my agent abuses the POA?

A. Abuses do happen, which is why you need to be careful in choosing your agent and limiting their authority. Unfortunately, no matter how careful you are, abuses are still possible. You are liable to third parties for all of your agent's actions if the actions were authorized under the plain language of the POA and the third party reasonably relied on the POA. It doesn't matter whether the agent's actions were foolish or against your wishes; if the action was authorized under the plain language of the POA, then you have no recourse against the third party. You may sue your agent for reimbursement of any loss you incur as a result of the agent's misuse of the POA, but that is a time-consuming, difficult, and expensive process, and there is no guarantee that your agent will be capable of reimbursing you, even if you win your lawsuit.

Remember, each case is different. This summary gives you general information only. It is not intended as a substitute for talking with a lawyer. If you have any questions, or need a POA prepared, you may consult a Legal Assistance attorney at the Legal Services Branch by calling 732-532-4371.